

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 618 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHARUMAL JAMADMAL CHANDANI

Versus

STATE OF GUJARAT

Mr.C.B.Dastoor for the petitioner
Mr.Y.F.Mehta, A.P.P. for resp.nos.1, 3 & 4
Mr.E.E.Saiyed for respondent no.2
Respondent no.5 served.

Coram: S.M.Soni & R.R.Jain JJ.
(26.8.96)

ORAL JUDGMENT: (Per Soni J.)

Petitioner, father of one Kishor alias Bhojumar,
has filed this petition under Article 226 of the
Constitution of India for issuance of a writ of Habeas
Corpus against respondent no.2. In the petition, it is
averred that Kishore is missing since November 1, 1995
and has not been found. It is also alleged in the

petition that he had gone to resume duty with respondent no.2 and has not returned since then. Before filing of this petition, petitioner has written a letter to Home Minister through some agency wherein it is alleged that the said boy is kidnapped and killed by Ghanshyamdas Tulsidas, in whose hotel he was serving, and one Gopal another employee of Ghanshyamdas. Prior to that, a J.J. (Janava Jog) entry is entered in the Police Station, wherein the boy is shown missing. Then a written complaint is lodged before Commissioner of Police, alleging that said Ghanshyamdas and Gopal have kidnapped and probably killed his son. That complaint is pending investigation.

On the petition being filed, notice was ordered to issue and respondent no.3, on behalf of respondents nos.1,3 and 4, has filed an affidavit-in-reply to the effect that on complaint being received, necessary investigation is carried out and from the statements of the witnesses, what reveals is: "that the son of the petitioner was working in respondent no.2, Ashoka Restaurant, and has left the Restaurant on 1st November 1995 during recess and thereafter never returned to work. They do not have any information of whereabouts of the son of the petitioner". Thereafter, in the course of investigation, it transpired that the boy had met some of the witnesses. Witness Bharat Pitamber states that said boy met him in Revdi Bazar and told him that he had left the house, as he had a quarrel in the house and he does not want to come back. There is another witness named Jairam Baburam, whom the boy met near Maya cinema. The boy has informed that witness that he had left the house. Thus, in the course of investigation, what is revealed is that the boy has left the house because of some quarrel in the family and has not returned back.

Respondent no.2 has filed his affidavit-in-reply and denied all the allegations. It is stated that whereabouts of Kishore is not known to him and he has not detained Kishore and he could not produce him before the court. Thereafter, it appears that an attempt is made to give a different colour to this petition by filing an affidavit of one Kalidas Somabbai Waghela, a Peon in the Municipal Corporation Office. Said Kalidas has stated "that the respondent has brought the political leader named Shri Chandrakant Bhagwandas Sindhi (Congress leader) who also came with three persons and whereby the said political leader was compelling the petitioner to settle the matter by taking the money". This court thereafter called upon said Chandrakant Bhagwandas Sindhi on his being joined as respondent no.5 and he has stated in his affidavit-in-reply to the following effect:-

"I say that the affidavit of Shri Kalidas is false and false ab initio. I state that I do not know the abovesaid Kalidas. I say that I have never seen and met at any place with the abovesaid Kalidas.

I state that I have never compelled the petitioner of abovesaid Special Criminal Application to settle the matter by taking money".

The fact of bringing pressure on the petitioner is also denied by respondent no.2 by his additional affidavit.

Respondent no.3 - Investigating Officer has produced before us the necessary record of investigation. From the said record, it is clear that whatever attempts required to be made on the part of investigating agency have been made and it appears that the boy is missing and is not detained by anyone, muchless respondent no.2.

Petition for Habeas Corpus lies when there is an allegation and substance is found in such allegation to the effect that a person is detained unlawfully by a particular person or at a particular place. Here, the said person has specifically stated, and the investigation has also revealed, that the missing boy is not detained by him. The boy is missing simpliciter. Therefore, for production of a missing corpus, Habeas Corpus petition does not lie. In view of this fact, this petition is liable to be dismissed and is hereby dismissed. Notice discharged.

Hooweever, respondent no.3 is directed noto give up the attempts to further investigate into the matter and put the complaint of abduction and murder to its logical end.
